

4  
IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF JUNE 1998

Before :

THE HON'BLE MR.JUSTICE G. PATRI BASAVANA GOUD

WRIT PETITION No.25856/1990

Between :

Hubli Dharwad Municipal  
Corporation, rePresented  
by Sri.Mahendra Jain,  
Commissioner, Hubli-Dharwad  
Municipal Corporation,  
Hubli, Dist: Dharwad.

230  
.. Petitioner

( By Sri.C.H.Jadhav, Advocate )

And :

Smt.Honnappa,  
W/o Thi panna, age: major,  
R/o. Indiranagar, Hubli,  
Dist: Dharwad.

.. Respondent

( By Smt.Suman Hegde, Advocate )

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This writ petition is filed under Articles  
226 & 227 of the Constitution of India Praying  
to set aside the impugned order passed by the  
Labour Court, Hubli at Hubli application No.  
34/84 dt. 10.8.90 Annexure-'D'.

This writ petition is coming on for final  
hearing this day, the Court made the following :

✓  
...2.

ORDER

27

The petitioner-employer viz., Hubli-Dharwad Municipal Corporation, in this writ petition under Articles 226 & 227 of the Constitution, seeks quashing of the order of the Labour Court, Hubli, under Section 33-C (2) of the Industrial Disputes Act, 1947 ('Act' for short) at Annexure-'D', by which, the Labour Court directed the petitioner to pay to the respondent a sum of Rs.21,556-34 ps. with interest at 6% p.a. from the date of the application under Section 33-C (2) of the Act till the date of realisation.

2. Respondent had been working with the petitioner-Corporation since 1943 as a Sweeper. The petitioner-Corporation sought to retire her from services with effect from 3.12.1980 since, according to the petitioner, she would attain the age of superannuation, that is, 60 years as on that day. But, having regard to the entry in her service record, she, however, contended that she would attain the age of 60 years only on 3.12.1985. She filed a suit O.S.No.545/80 in the Munsiff Court, at Hubli, for declaration of her date of birth

272  
and for temporary injunction and in the  
meantime, obtained injunction from the Munsiff  
Court, on the strength of which, she continued  
in service from 3.12.1980. The suit, however,  
came to be dismissed on 16.10.1982. Even  
then, she was retired from service only on  
21.3.1983. In this background, she filed an  
application under Section 33-C (2) of the Act  
claiming a sum of Rs.21,556-34 ps.

3. The suit filed by the respondent  
having eventually been dismissed, for the  
purpose of Pension, Gratuity etc., it must  
be taken that, she retired from service on  
3.12.1980 on attaining the age of superannua-  
tion. Her continuance in service from 3.12.80  
up to 21.3.1983 was on account of her having  
approached the Civil Court and having obtained  
an order of temporary injunction. The said  
services cannot be taken into consideration  
for any purpose, much less, for the purpose  
of computing Pension, Gratuity, leave encash-  
ment etc., as claimed by the respondent. The  
Labour Court has granted relief accepting her  
claim in its entirety. Having said so, it  
also needs to be stated that, the contention

273

of the petitioner that, for the services rendered by the respondent during the period from 3.12.1980 to 21.3.1983, she could not have been paid any wages, because, she has failed to establish the date of birth as claimed by her and that, therefore, the wages paid during the said period should be deducted, cannot be accepted. For whatever reason she might have been continued in service, the fact remains that, she had been regularly appointed and had been working in the Corporation since 1943, and actually worked as Sweeper even during the period from 3.12.80 to 21.3.1983. Whatever wages are paid to her during this period are wages paid for the work done. By no stretch of imagination can an employer ask for its refund, and in the same way the employer cannot give back the time and energy spent by the respondent in doing actual work. The wages paid for the period from 3.12.1980 to 21.3.1983, therefore, are wages for the work done, and the petitioner cannot ask the respondent to refund the same. At the same time, the said period i.e. from 3.12.1980 to 21.3.1983, cannot be considered for any purposes like computing

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274

the period for Pension, gratuity, leave encashment etc. The Labour Court erred in granting relief taking the said period also as part of the regular service.

4. Writ petition is partly allowed. Impugned order is set aside. While holding that the wages paid to the respondent for the period from 3.12.1980 to 21.3.1983 cannot be asked to be refunded, the Labour Court is directed to compute the amount due to the respondent by way of Pension, Gratuity etc., on the footing that, for the said purposes, respondent retired from service with effect from 3.12.1980. The matter is, therefore, remitted to the Labour Court, Hubli, for fresh determination of respondent's application under Section 33-C (2) of the Act in accordance with law and in the light of the discussions made above and the conclusion reached above.



Bk/

Sd/-  
JUDGE